

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LINWOOD BRANT,	)	
	)	
Plaintiff,	)	Civil Action No. 04-1584
	)	
v.	)	Judge Flowers Conti
	)	Magistrate Judge Caiazza
	)	
WEXFORD HEALTH CARE SERVICE,	)	
<i>et al.</i>	)	
	)	
Defendant.	)	

**MEMORANDUM ORDER**

On October 15, 2004, this case was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On May 30, 2006, the magistrate judge issued a Report (see Docs. 109 & 111) recommending: that the Department of Corrections Defendants' Renewed Motion for Summary Judgment (Doc. 69) be granted; that partial summary judgment be granted, *sua sponte*, in favor of the Independent Contractor Defendants regarding the Eighth Amendment; and that the claims against the Independent Contractor Defendants be dismissed as to the First Amendment, procedural due process, the Fifth Amendment, and 42 U.S.C. § 1988.

The Plaintiff filed Objections on June 14, 2006. See Doc. 115. Essentially, he claims that the Magistrate Judge based his decision on credibility determinations with respect to the Eighth Amendment claim. See generally *id.*

A review of the Report and Recommendation reveals, however, that the decision was not based on credibility issues but rather on the uncontroverted medical treatment the Plaintiff received dating from the time of his injury. See Pl.'s Decl. (Doc. 101) and Report and Recommendation at 3-4. The Plaintiff merely second-guesses the diagnosis and treatment of his medical care, and that does not state a claim of deliberate indifference. See Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979).

Thus, after *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and the objections thereto, the following ORDER is entered:

AND NOW, this 25th day of July, 2006, IT IS HEREBY ORDERED that: the Department of Corrections Defendants' Renewed Motion for Summary Judgment (Doc. 69) is GRANTED; summary judgment is GRANTED, *sua sponte*, in favor of the Independent Contractor Defendants regarding the Eighth Amendment claim; and the Plaintiff's claims against the Independent Contractor Defendants under the First Amendment, the procedural Due Process clause, the Fifth Amendment, and 42 U.S.C. § 1988 are DISMISSED.

The Report and Recommendation of Magistrate Judge Caiazza dated May 30, 2006 is adopted as the opinion of the district court.

/s/ Joy Flowers Conti  
Joy Flowers Conti  
United States District Judge

cc:

Francis X. Caiazza  
Chief U.S. Magistrate Judge

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